LIEW SAM LEE v. KWAN TECK MENG & ORS.

[F.C. (Thomson L.P., Barakbah C.J. (Malaya), Wylie C.J. (Borneo)) July 11, 1964]

[K.L. — Federal Court Civil Appeal No. 32 of 1963]

Landlord and tenant — Controlled premises — Claim for possession — Premises for use by four out of five members of partnership — Whether claim should succeed — Control of Rent Ordinance 1956, s. 12(1)(f).

In this case all five respondents sued for possession under section 12(1)(f) of the Control of Rent Ordinance as "registered proprietors and landlords". The 5th respondent sued also as a trustee of one KTB, a minor. The respondents gave evidence that the premises were required for use for the purposes of a business in which a firm in which the first four respondents were partners might join. The 5th respondent and KTB were not partners in the firm. In the court below the respondents succeeded solely under section 12(1)(f) of that Ordinance. On appeal the only question for consideration was whether joint owners could claim the benefit of section 12(1)(f) of the said Ordinance if they require possession for some only of their number and not for all.

Held: putting the evidence at its highest it only established that not more than four of the five owners were to occupy the premises and consequently they did not establish a right to possession under section 12(1)(f) of the Ordinance. *McIntyre & Anor.* v. *Hardcastle* (2) applied.

FEDERAL COURT.

S. D. K. Peddie for the appellant.

N. A. Marjoribanks for the respondents.

Cases referred to:—

(1) *McIntyre & Anor.* v. *Hardcastle* [1948] 2 K.B. 82.

(2) *Baker* v. *Lewis* [1947] 1 K.B. 186, 193.

Cur. Adv. Vult.

Wylie C.J. (Borneo): Appellant put forward nineteen grounds of appeal. Of this somewhat large number, twelve grounds related to the title of the respondents to the property rented by the appellant. Having regard to the view I take of other grounds of appeal which challenge the decision of the learned trial judge that the landlords were entitled to an order for possession under section 12(1)(f) of the Control of Rent Ordinance, 1956, it is not necessary for me to discuss these twelve grounds. At the close of the appellant's case, the court indicated to counsel for respondent that it did not wish to hear respondent on those grounds and it would therefore be inappropriate to express any considered view on the far-reaching questions raised by these grounds and I expressly refrain from doing so. I merely observe that, whatever is the correct answer, these questions arise only incidentally in these proceedings between landlord and tenant concerning an unregistered tenancy agreement, where such considerations as the position of a tenant challenging his landlord's title and the possibility of estoppel operating against the tenant on account of his dealings with the respondents, might well prove of more importance in proceedings of this nature than the answer to questions merely challenging the landlord's registered title to the property.

All but one of the remaining grounds relate to the decision of the trial judge to make an order for possession under section 12(1)(f) of the Control of Rent Ordinance, 1956 and I find it necessary to refer to only three of these grounds which read as follows:—

"16. The learned trial Judge should have held that the onus of proving that all the plaintiffs required the premises for their own purposes rested upon the plaintiffs and that they had failed to discharge that onus.

17. The learned trial Judge was wrong in law in holding, if he did so hold, that the fact that the fifth plaintiff supported the action was enough to satisfy the requirements of section 12(1)(f) of the Control of Rent Ordinance, 1956.

18. The learned trial Judge was wrong in law in holding that the case of *McIntyre and Another* v. *Hardcastle* had no application to the facts of the case before him."

The respondents took proceedings as landlords against the appellant, who was their tenant, to recover possession of premises subject to the Control of Rent Ordinance, 1956 and succeeded in the court below solely under section 12(1)(f) of that Ordinance. Consequently, there is no need to review the evidence in this judgment other than that concerned with this issue.

All five respondents sued for possession as "registered proprietors and landlords", but the fifth respondent, Kuan Kong Cheong, sued also as a trustee for one Kuan Teck Bee, who is apparently a minor. To support their claim to an order for possession under section 12(1)(f) of the Ordinance, the respondents gave evidence that the premises were required for use for the purposes of a business in which a firm in which the first four respondents are partners, might join. The fifth respondent is not a partner in the firm, nor, of course, is the minor, Kuan Teck Bee. Counsel for the respondent conceded that the fifth respondent's evidence was conclusive on these issues of fact, and, indeed, the trial judge did not find that either trustee or beneficiary was a partner.

The judgment dealt with this aspect in the following terms:—

"It has been contended by the defendant that as all the plaintiffs are not partners of United Trading Co. they are not entitled to an order for possession. The authority relied on by the defendant for this contention is the case of *McIntyre and Another* v. *Hardcastle* in which it was held that where two sisters, joint owners of a house within the Rent Restriction Act, sought possession of the house on the ground that the house was required as a residence for one of them only, the case was not within the relevant paragraph of the Act and that no order for possession could be made under it. It is also argued that it is only the first plaintiff who requires the premises to carry on his business. As against this, the first plaintiff has said that it is not

necessarily the United Trading Co. which is going to do the business at the premises although that firm may join them. The only plaintiff who is not a member of the United Trading Co. is the fifth plaintiff but he has said that he supports the action because it will be in the interest of the person for whom he holds the beneficial interest in the premises on trust to join the business. In my opinion *McIntyre and Another* v. *Hardcastle* has no application to this case."

So far as relevant, section 12(1)(f) of the Control of Rent Ordinance, 1956, provides:—

"12. (1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely....

(f) where the owner of the premises reasonably requires the same for occupation by himself or any member of his family or any person for whom he holds the premises in trust...."

Obviously difficulties arise in applying this provision to a case where there are several owners. One owner cannot sue for possession on his own, all must join before an order for possession can be made. What is to happen, then, if possession is required only for one, or some, of the owners, as must be accepted to be the case here? For, as the respondents concede, possession is not sought for the fifth owner, who is a bare trustee, nor for his beneficiary. Neither is a member of the partnership for whom possession is sought. It is true, as the learned trial judge states, that the trustee supports the action of the other plaintiffs and the judge has found, as he was entitled to do on the evidence, that the plaintiffs' claim for possession of the premises for the purposes of this business is made *bona fide*. However, support by all the owners and the *bona fide* nature of the claim are not what the section requires. It must be shown that the *owner* of the premises requires them for occupation by *himself*. And the only question is whether joint owners can claim the benefit of this provision if they require possession for some only of their number, and not for all.

McIntyre and Another v. *Hardcastle* [1] was concerned with this question under the corresponding provision of the rent restriction legislation in England. Two sisters were joint beneficial owners of a house within the Rent Restriction Acts, and claimed *inter alia* that the house was required for occupation by one of them. The Court of Appeal held unanimously that an order for possession could not be made in such circumstances and gave an interpretation to the English provision which, in effect, means that an order cannot be made under this provision, where possession is sought by some only of the joint beneficial owners. The relevant provision was contained in the First Schedule to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, which gave a court power to make an order for possession *inter alia* "if....the dwelling house is reasonably required by the landlord....for occupation as a residence for —

(i) himself; or

(ii) any son or daughter of his over eighteen years of age; or

(iii) his father or mother."

There is a proviso, as there are also two provisoes to the Malayan subsection, but none of these provisoes has any effect unless the landlord (in England) or the owner (in Malaya) first establishes that the premises are required for occupation by one of the persons described in the substantive provision.

In giving decision in an earlier case before the Court of Appeal (*Baker* v. *Lewis* [2]) Somervell L.J. and Asquith L.J. had advanced contradictory views as to the proper interpretation of this section. These views were *obiter dicta*, but in *McIntyre* v. *Hardcastle* [1] the interpretation put forward by Asquith L.J. was accepted without dissent by any of the three members of the Court, which included Somervell L.J. Tucker L.J., who gave the main judgment, dealt with the matter thus [3]:—

"All kinds of difficulties have been suggested to us as likely to follow whichever interpretation is accepted by us. I do not think that the legislature really contemplated this situation when this paragraph was framed. Therefore, I feel driven to interpret it merely in the light of the actual language used. Looking at it in that way, I feel convinced that the interpretation put upon it by Asquith L.J. was the correct one, and I will not attempt to put into better language what he so clearly expressed in the passage just quoted."

The passage referred to was from *Baker* v. *Lewis* [1] and reads as follows:—

"This court has decided, in *Owen* v. *Overy*, that 'landlord' in para. (h) of sch. I. to the Act of 1933 covers two or more joint beneficial owners, and in *Sharpe* v. *Nicholls* that it does not cover two or more bare personal representatives. Where there are two or more joint beneficial owners, I would incline to a construction of (h) narrower than put forward or kept open, by my brother. In the event, (i), (ii) and (iii) of (h) should, I think, be read as follows: in (i), for 'himself' read 'themselves'; in (ii), for 'any son or daughter of his' read 'any son or daughter of theirs', and in (iii), read 'their father or mother'. Where, read in this way, neither (i), (ii) nor (iii) has any application, such beneficial owners would fail — for instance, if they proceed under (ii) and are not a married couple with a child, or if they proceed under (iii) and have not got a parent in common; but they would fail in that case not because there are several of them or because they are not a 'landlord' within the opening words of the section, but because they could not bring themselves within the language of (i), (ii) or (iii), construed in the way I suggest."

With respect, I agree with the view advanced by Tucker L.J. that there is nothing in the language used in either of these provisions from which can be deduced any intention of the legislature as to the application of these provisions where there is more than one landlord or owner.

That being so, there is no justification for reading into either provision additional words in an effort to give effect to what might have been that intention, such as interpreting the word "owner" as if it meant "owner or, if more than one, any of them". Giving the language of the Malayan provision its literal meaning, therefore, all that can be said is that as, by virtue of the normal rule of interpretation, the singular includes the plural, the word "owner" must, in appropriate circumstances, be taken to mean "owners" and other references to the owner, such as the word "himself", must similarly be read in the plural.

I have not overlooked the fact that there are differences in the language used in the Malayan and English provisions and that some of these differences result in substantial difference in the effect of the two provisions, for example, in the class of persons for whom possession may be sought. However, I cannot find in those differences any feature that suggests that the foregoing reasoning is affected in any manner, or that the conclusion should be any different.

Moreover, the Malayan provision has been in force since 1947, the decision in *McIntyre's* case [1] was delivered in 1948, and the Malayan provision was re-enacted in the same form in 1956, as part of completely new rent control legislation. Moreover, the new Ordinance contained a number of amendments to the 1947 law, including several extensive amendments to section 12(1), one of which was the addition of an important proviso to paragraph (f) itself. So far, therefore, as the relevant part of paragraph (f) is concerned, there is the strongest evidence of an intention on the part of the legislature not to vary whatever the effect of that part of the paragraph was. It can only be assumed that, in undertaking such a comprehensive re-enactment and amendments, and in amending paragraph (f) itself, the advisers to the government were aware of the effect of similar provisions as a result of judicial interpretation.

In these circumstances, it is hardly feasible to hold the view that, in 1956, the legislature could have had an intention to provide for any effect contrary to that resulting from the decision in *McIntyre's* case.[1]

This history of the subject confirms the view that the interpretation adopted in that case is a correct interpretation of the intention of the Malayan legislature.

Putting the evidence at its highest, it only establishes that not more than four of the five owners were to occupy the premises and consequently the respondents did not establish a right to possession under section 12(1)(f). On this ground, this appeal must be allowed with costs to the appellant. The order of the court below must be set aside and the appellant should have an order for his costs in that court also.

Thomson L.P.: I have had the advantage of reading the judgment of Sir Campbell Wylie. I agree this appeal should be allowed with costs.

Barakbah C.J. (Malaya) concurred.

Appeal allowed.

Solicitors: *Skrine & Co.; Lovelace & Hastings.*

CHOZI v. CHITRASENAN

[O.C.J. (Ambrose J.) July 18, 1964]

[Singapore — Suit No. 75 of 1963]

Master and Servant — Safe system of work — Work intrinsically dangerous — Negligence of servant — Injury to fellow servant — Vicarious liability of master — Duty to take reasonable care.

Damages — Ankle — Compound fracture of heel-bone — Probability of plaintiff going to India — Reduction of special damages.

The plaintiff aged 57, a labourer, sustained a compound fracture of his right heel-bone as a result of a rail falling on his right foot, while he, in the course of employment by the defendant, was unloading rails from a railway wagon in Johore. In this action he claimed damages for the injury on the ground of the negligence of the defendant or his servants. He alleged that one A, a servant or agent of the defendant, so negligently managed or controlled the unloading of the rails that while A was pushing one end of a rail it fell on the plaintiff's right ankle as the plaintiff came to the edge of the wagon and injured him. He further alleged that the defendant was negligent in failing to provide a safe system of work. The defendant denied the negligence and pleaded that the injury was caused solely or contributed to by the plaintiff's negligence. The learned judge accepted the evidence of plaintiff's witness and found that there was no contributory negligence on the part of the plaintiff, and

Held: (1) there was a duty owed to the plaintiff by A to take reasonable care in the work of managing or controlling the unloading of rails; on the commonsense view of the evidence the rail fell on the plaintiff's right foot as a result of A's negligence and the defendant was vicariously liable for such negligence;

(2) the work involved was intrinsically dangerous and the defendant should have provided and maintained a reasonably safe system of work and the defendant was negligent in failing to do so (the statement of the law contained in para. 976, pp. 508-10 of 25 *Halsbury's* Laws, 3rd Edn. adopted);

(3) the defendant might delegate the performance of his duty as employer to provide a reasonably safe system of work; but he could not delegate or avoid his own responsibility for the proper performance of his personal duty; as his workmen did not properly perform the duty delegated to them, the defendant could not escape liability;

(4) taking into account the possibility that the plaintiff would have gone to India for 6 months during the period of 36 months (from the date of the accident to the date of the trial) $14,500 should be awarded as special damages for loss of earnings for 30 months at